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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,208	06/20/2003	Curtis A. Vock	409512	7339

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EXAMINER	
MILLER, CRAIG S	

ART UNIT	PAPER NUMBER
2857	

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary	Application No.	Applicant(s)	
	10/601,208	VOCK ET AL.	
	Examiner	Art Unit	
	Craig Miller	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *2/17/05*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The text of those sections of Title 35. U.S. Code not included in this action can be found in a prior Office action.

2. Claims 10-13, 15-17, 19, 20, 22 and 23-26 are rejected under 35 U.S.C. 103 as being unpatentable over Hershey *et al.* (6,643,608 B1) in view of Tennes *et al.* (4,745,564).

As to claims 10, 16 and 26, Hershey *et al.* discloses a system, "...*for collecting and analyzing shipment parameter data, e.g., temperature, vibration, acceleration, shock, humidity, barometric pressure, pH, transit time, container position, etc.* (abstract)" through the use of data collection subsystems, said subsystems comprising containers of one or more shipped objects (col. 3), collecting the parameter data and storing same internally and finally transmitting the data wirelessly to remote locations for further analysis. Hershey *et al.* does not specify that the subsystems should comprise a simulated product. Tennes *et al.* discloses that such shipped item environmental measurements should be produced in the form of the object to be shipped with wired data communications to the measuring object. Because the disclosures of Hershey *et al.* and Tennes *et al.* are within the art of shipping object environmental monitoring, because Hershey *et al.* discloses that one should monitor the environment of objects during shipping and because Tennes *et al.* discloses that environmental monitoring devices should be in the form of shipping objects, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include within the device of Hershey *et al.* the recommended subsystem form suggested by Tennes *et al.*, replacing one measuring means form with another, each performing similar functions in similar ways, so as to receive the expected benefits derived there from such as enhanced system flexibility absent a showing of unexpected results or synergistic results from any particular claimed combination.

More particularly with respect to attachment of sensors. Hershey *et al.* as modified above discloses integrated sensors. The Examiner notes that it is generally known that, "(t)*he mere fact that a given structure is integral does not preclude its consisting of various elements.*" Nerwin v. Erlichman, 168 USPQ 177, 179 (PTO Bd. Of Int. 1969). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to separately attach the disclosed sensors of the device of Hershey *et al.* so as to receive the expected benefits derived there from such as enhanced system

flexibility absent a showing of unexpected results or synergistic results from any particular claimed combination.

More particularly with respect to claims 11, 12 and 17, said claims are directed towards the use of internet communications. Hershey *et al.* as modified above discloses that Internet communications should be used to transfer measured data for further processing (col. 3 lines 14+). The Examiner notes that conventional wireless communications and Internet communications inherently require forms of interrogation to initiate communications.

More particularly with respect to claim 20, said claim is directed towards the monitoring of object impact and temperature. Hershey *et al.* discloses such monitoring (see abstract). The Examiner notes that the monitoring of shock inherently requires and is not significantly distinguishable within the art of object monitoring from the claimed monitoring of impacts.

More particularly with respect to claims 13, 19 and 22, said claims are directed towards the monitoring of object acceleration. Hershey *et al.* discloses such monitoring (see abstract).

More particularly with respect to claims 15 and 23, said claims are directed towards the monitored temperature comparisons. Hershey *et al.* discloses such monitoring (col. 5 line 49 through col.6 line 3).

As to claims 24 and 25, said claims are directed towards time stamping monitored data. Hershey *et al.* does not specify that the monitored data should be time stamped. But does inherently include a clock for time related events (col. 4 lines 9+). Tennes *et al.* discloses that such shipped item environmental measurements should be time stamped (see abstract). Because the disclosures of Hershey *et al.* and Tennes *et al.* are within the art of shipping object environmental data monitoring, because Tennes *et al.* discloses that such data should be time stamped, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include within the device of Hershey *et al.* as modified above the recommended data time stamping suggested by Tennes *et al.*, so as to receive the expected benefits derived there from such as enhanced system measured data analysis flexibility absent a showing of unexpected results or synergistic results from any particular claimed combination.

3. Claim 18 is rejected under 35 U.S.C. 103 as being unpatentable over Hershey *et al.* in view of Tennes *et al.* as applied to claim 16 above and further in view of Haan *et al.* (6,125,686).

Claim 18 is directed towards the form factor of a handheld monitoring device for shipping objects. Hershey *et al.* as modified above does not specify that the disclosed data receiving device should be of handheld form factor. Haan *et al.* discloses a fragile object monitoring system comprising a handheld receiver. Because the devices of Tennes *et al.* as modified above and Haan *et al.* are both within the object monitoring art and because Haan *et al.* discloses that data collection devices should be handheld, because it is generally known that, "*...it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected result.*" In re Lindberg, 93 USPQ 23 (CCPA 1952), Ranco, Inc. v. Gwynn et al., 128 F.2d 437 (54 USPQ 3), it would have been obvious to one of ordinary skill in the art at the time the invention was made to include within the device of Hershey *et al.* as modified above the recommended handheld form suggested by Haan *et al.*, replacing one form factor with another, each performing similar functions in similar ways, so as to receive the expected benefits derived there from such as enhanced system flexibility absent a showing of unexpected results or synergistic results from any particular claimed combination.

4. Claim 14 is rejected under 35 U.S.C. 103 as being unpatentable over Hershey *et al.* in view of Tennes *et al.* as applied to claim 16 above and further in view of Thompson *et al.* (4,862,394).

Claim 14 is directed towards the detection of free fall by a monitored object. Hershey *et al.* as modified above discloses monitoring impact and acceleration but does not specify that states of free fall (acceleration equal in magnitude and direction to gravity) should be detected. Thompson *et al.* discloses a freefall drop height sensor for shipping objects. Because the devices of Tennes *et al.* as modified above and Thompson *et al.* are both within the shipping object monitoring art and because Thompson *et al.* discloses that states of free fall should be detected, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include within the device of Hershey *et al.* as modified above the recommended freefall state suggested by Thompson *et al.* so as to receive the expected benefits derived there from such as enhanced system flexibility absent a showing of unexpected results or synergistic results from any particular claimed combination.

5. Claims 27-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Said claims are dependent upon cancelled claim 1.

6. Applicant's arguments filed 31 January 2005 have been fully considered but they are not persuasive.

As to Applicant's arguments of page 6, second and fourth paragraphs, Applicant argues that Hershey *et al.* fails to disclose an interceding receiver between the container and the data subsystem. This is not accurate. Hershey *et al.* discloses that wireless communications are properly within the disclosed monitoring device (col. 4 first paragraph) and that the data may be transmitted to the processing device by any network including the public Internet. Such an arrangement, including a wireless data connection to the container and a distant internet connected remote data processing location inherently requires a communication intermediary, thus fulfilling the limitations of the claim. Hershey *et al.* further discloses in the second paragraph of col. 3 that the data may be processed locally or sent in raw form to the central location.

As to Applicant's argument in the third paragraph of page 6 and the bottom of page 7, Applicant argues that Hershey *et al.* does not disclose sensor attachment to an item to be monitored. Hershey *et al.* discloses in paragraph 3 of col. 3 that any commercially available sensor may be utilized to implement the invention. Tennes *et al.* discloses a commercially available monitoring sensor which is described in col. 2 lines 50+ as either looking like a target object or attached to such an object if size permits. Therefore the combining of the monitoring devices of Hershey *et al.* and Tennes *et al.* is not without suggestion within the prior art. While Applicant neither specifically claims benefit to small sensor sizes nor limits the instant claimed invention by size, the Examiner makes note that changes in size, even when accompanied by expected beneficial effects, do not necessarily create patentability. In re Rose, 105 USPQ (CCPA 1955).

As to Applicant's arguments at the top, third paragraph and bottom of page 7, Applicant asserts that Tennes *et al.* limits its disclosure to three axis accelerometers. Such is not the case. While

Tennes *et al.* does indeed disclose at the top of col. 2 the benefits of a three axis accelerometer sensor, Tennes *et al.* discloses in col. 4 lines 23+ that not all three axis may be required in all uses of the invention. Tennes *et al.* further discloses in col. 9 lines 40+ that sensors need not be limited to accelerometers and may include temperature, pressure and humidity.

As to Applicant's argument in the second paragraph of page 7, Applicant argues that Hershey *et al.* does not suggest combining with the sensors of Tennes *et al.* This argument is not agreed with. Hershey *et al.* discloses in paragraph 3 of col. 3 that any commercially available sensor may be utilized to implement the invention. Tennes *et al.* discloses a commercially available monitoring sensor which is described in col. 2 lines 50+ as either looking like a target object or attached to such an object if size permits. Therefore the combining of the monitoring devices of Hershey *et al.* and Tennes *et al.* is not without suggestion within the prior art. While Applicant neither specifically claims benefit to small sensor sizes nor limits the instant claimed invention by size, the Examiner makes note that changes in size, even when accompanied by expected beneficial effects, do not necessarily create patentability. In re Rose, 105 USPQ (CCPA 1955).

7. **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Craig Steven Miller whose telephone number is (571) 272-2219. Central facsimile services are now available at (703) 872-9306.

The Examiner can normally be reached on Mondays through Thursdays from 6:30am-2:00pm EDT. Should repeated attempts to reach the Examiner be unsuccessful, the Examiner's Supervisor, Marc Hoff may be reached at (571) 272-2216.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the Private PAIR system, see http://pair-direct.uspto.gov. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Craig Steven Miller (ss)
03 May 2005

MARC S. HOFF
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